DS0 loops will no longer be subject to wholesale performance standards.[101] Qwest understands this complaint to be directed at the fact that Qwest proposes taking commercial DS0 loops out of CMP and PID/PAP payments.[102]

McLeod's complaint that Qwest's proposed DS0 commercial agreement rates are 30% higher than TELRIC is inaccurate. As described above, Qwest's proposed MRC for DS0 loop is less than five percent above the TELRIC rates ordered by the Nebraska PSC, and the NRC is lower than the TELRIC rates ordered by the Nebraska PSC. On the other hand, it is true that Qwest is not raising the rates on QPP/QSLP.[103] Before the Commission granted forbearance in Omaha, McLeod argued that the Commission should deny Qwest's request predicting that Qwest would cease to offer QPP/QLSP.[104] Now that its prediction that Qwest would harm CLECs that buy QPP/QLSP proved wrong, McLeod complains that Qwest has treated such carriers too well. This complaint just confirms the old adage that no good deed goes unpunished. Of course, it is possible for McLeod to buy QPP/QLSP. Turning to McLeod's complaint that Qwest will no longer make commercial agreement DS0 loops subject to CMP and PID/PAP, it is clear that CMP and PID/PAP provisions are part of Qwest's SGAT under Sections 251 and 252. The CMP and PAP, by their terms, apply only to UNEs, interconnection, collocation, and resale under interconnection agreements. They need not be part of a Section 271 offering. The DS0 commercial agreement does provide for a dispute resolution process, which McLeod could use if it believed that Qwest was discriminating against it with respect to installation and repair of

[101] *Id.* at 8.

[102] Eben Decl. n.22.

[103] Of course, offering the loop plus switching is a bundle. Price discounts with bundling are a feature of competitive markets.

[104] McLeod Sept. 14, 2005 *ex parte* at 3.

comparable services. Moreover, to the extent that CMP encompasses items common to both Section 251 and the commercial agreement DS0 loops, McLeod will continue to have access to CMP.

In sum, Qwest's offer of DS0 loops to McLeod pursuant to a commercial agreement meets the standards of Section 271. The rates, terms and conditions are just and reasonable.

C. Qwest's DS1 And DS3 Offer Is Just And Reasonable

McLeod is equally incorrect in its argument that offering RCP does not discharge Qwest's obligations under the *Omaha Forbearance Order*.[105] Not only does RCP discharge Qwest's obligations, other provisions of Qwest's interstate access tariff do too. Qwest's DS1/DS3 offer meets the first prong of the Section 271 test set forth in the *TRO*. That is, Qwest is offering these elements to McLeod at the rate at which Qwest offers comparable functions to similarly-situated purchasing carriers under its interstate access tariff.[106] Accordingly, the rates are just and reasonable and meet Qwest's duty to comply with its wholesale obligations under Section 271.

McLeod's other complaints are equally unavailing. Qwest is not exercising monopoly power by relying on its RCP offering.[107] Moreover, as detailed above in Section II.A. and in the Teitzel Declaration at paragraphs 3 through 15, there are intense market forces constraining Qwest. It is likely the intense competition in Omaha that leads McLeod to decide to exit Omaha, and suggests to Integra that there may be more attractive markets to enter. Because of the intense competition in Omaha, from Cox and other carriers, even if McLeod exits the market

[105] McLeod Petition at 5, 11.

[106] *See TRO*, 18 FCC Rcd at 17389 ¶ 664.

[107] McLeod Petition at 7.

McLeod's current retail and wholesale customers will likely benefit from the choice of multiple carriers.[108]

In fact, it is highly unlikely that McLeod does not have other carriers from whom it could buy substitutes for Qwest's special access services. As detailed above, there are at least four alternative providers in Omaha. Yet, declarant Don Eben states that "CLECS have no viable wholesale alternatives for last mile loop facilities in Omaha."[109] Declarant Pritesh Shah asserts that McLeod is aware of at least one alternative provider in Omaha when he states: "I am personally aware that McLeodUSA representatives have contacted the cable operator in Omaha on more than two occasions, but the cable operator has declined to offer access to its facilities on a wholesale or resale basis."[110] Thus, Mr. Shah is aware that Cox (which is presumably the cable operator referenced) offers alternative services to carriers such as McLeod in Omaha. However, the McLeod assertions appear to be carefully worded. By stating that "CLECs have no viable wholesale alternatives" and that Cox "declined to offer access to its facilities on a wholesale or resale basis," McLeod is not stating that Cox flatly declined to offer McLeod access to its Omaha facilities. Instead, McLeod implies that Cox was not willing to offer such access on prices or terms to McLeod's liking. Apparently, McLeod classifies whether access is "wholesale" access based on the pricing, akin to its claims that Qwest is not meeting its "wholesale obligation" with its offer of tariffed special access.[111] McLeod's definition of wholesale pricing appears to be pricing that is at or near UNE pricing.

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[108] *See id.*

[109] Eben Decl. ¶ 26.

[110] Declaration of Pritesh D. Shah (attached to McLeod Petition) ¶ 6.

[111] McLeod Petition at 2.

In sum, Qwest is entitled to implement the relief granted in the *Omaha Forbearance Order*, and may rely on tariffed special access to meet its Section 271 obligations. In addition, McLeod could self-provision or buy facilities offered by other carriers. McLeod's business decision not to enter an RCP, and not to buy from other carriers, should not constrain Qwest's right to rely upon the Commission's forbearance grant.

D. McLeod's Remaining Concerns Are Misplaced Requests For Reconsideration

McLeod's remaining concerns are a misplaced request for reconsideration. McLeod complains that the Commission did not provide for an interim pricing period for negotiations of commercial agreements as it did in the *ACS of Anchorage Order*.[112] Further, McLeod complains that the Commission did not properly analyze the public interest under the third prong of section 160(a).[113] Specifically, McLeod argues that the Commission should not have considered regulatory parity and that the Commission misunderstood the costs of unbundling.[114]

It is too late for McLeod to ask for an interim pricing requirement. Moreover, it is noteworthy, that in the *ACS of Anchorage Order*, the Commission set the interim rate by reference to a commercially negotiated rate in another study area, rather than based upon a UNE rate.[115]

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[112] *Id.* at 10 n.33.

[113] *Id.* at 13.

[114] *Id.*

[115] *In the Matter of Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended, for Forbearance from Sections 251(c)(3) and 252(d)(1) in the Anchorage Study Area*, Memorandum Opinion and Order, 22 FCC Rcd 1958, 1983-84 ¶ 39, *appeals dismissed nom., Covad v. FCC*, Case No. 07-70898 (9th Cir. June 14, 2007).

Similarly, it is too late for McLeod to begin complaining about the Commission's public interest analysis in the *Omaha Forbearance Order*. McLeod's argument that the costs of unbundling are determined by reference to the incremental costs of the Operational Support Systems that support the provision of UNEs[116] likely would not have succeeded as it completely ignores relevant precedent from the D.C. Circuit and the Commission, describing the costs of unbundling such as "reducing the incentives to invest in facilities and innovation and creating complex issues of managing shared facilities."[117] Again, if McLeod wanted the Commission to consider this argument, it should have made the argument prior to the Commission's forbearance grant or on reconsideration.

IV. CONCLUSION

McLeod has been dogged in its attempts to maintain access to UNE loops and transport throughout the Omaha MSA. The Commission should reject this latest attempt to force Qwest to maintain UNE pricing in the OFO Wire Centers.

Respectfully submitted,

QWEST CORPORATION

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August 29, 2007

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[116] McLeod Petition at 13 and Declaration of Dr. August H. Ankum (attached to McLeod Petition) ¶ 4.

[117] *See, e.g., TRRO*, 20 FCC Rcd at 2559 ¶ 44 n.131; *see also, USTA II*, 359 F.3d at 572.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area	))))	WC Doc. No. 04-223

DECLARATION OF DAVID L. TEITZEL

1. My name is David L. Teitzel. I am employed by Qwest Services Corporation[1] ("QSC") as Staff Director-Public Policy. My business address is 1600 7th Avenue, Room 3214, Seattle, WA, 98191. I have been employed by Qwest and its predecessor companies, U S WEST and Pacific Northwest Bell, for over 33 years. My current responsibilities include analyzing telecommunications competition in the geographic areas and markets served by Qwest. In that capacity, I have developed and presented competitive evidence and testimony (including written declarations/affidavits) in numerous state and federal regulatory proceedings.

I received a Bachelor of Science degree from Washington State University in 1974 and have been continuously employed by Qwest and its predecessor companies since that

[1] Qwest Services Corporation is a subsidiary of Qwest Communications International, Inc. that performs support functions, such as regulatory support, for other Qwest entities.

time. I have held a number of management positions in various departments, including Regulatory Affairs, Network and Marketing. As a Marketing product manager, I was responsible for product management of Basic Exchange, Centrex and IntraLATA Long Distance services. I have also served as a Market Manager for Qwest Dex directories in the Puget Sound region. I was named to my current position in March 1998.

2. The purpose of this declaration is to respond to allegations in the petition and associated declarations of McLeodUSA ("McLeod"), filed on July 23, 2007, regarding purported competitive harms and "unreasonable" wholesale pricing practices by Qwest in the nine Omaha wire centers[2] for which the FCC granted Qwest forbearance relief in its order adopted on September 16, 2005 and released on December 2, 2005. My declaration provides clear evidence that, contrary to McLeod's assertions, local exchange competition continues to thrive in the nine OFO wire centers, that competitive alternatives to Qwest's Special Access services are readily available in the Omaha market, that factors other than Qwest's pricing practices in Omaha are driving McLeod's business difficulties and that Qwest's wholesale pricing practices are appropriate and in conformance with Section 271 pricing requirements.

[2] The nine Omaha MSA wire centers will be referenced hereafter in this declaration as the Omaha Forbearance Order ("OFO" OR "Omaha order") wire centers.

LOCAL TELECOMMUNICATIONS COMPETITION IS ROBUST IN THE OMAHA MSA

3. In my original declaration accompanying Qwest's Omaha forbearance petition filed on June 21, 2004 in WC Docket No. 04-223, as well as in subsequent ex parte submissions with the FCC, Qwest provided extensive evidence of telecommunications competition in the Omaha MSA, demonstrating that Qwest is no longer the dominant provider in that market. In replying to McLeod's allegations in its July 23, 2007 petition, however, I focus primarily on the status of competition in the business markets, since, as stated at page two of the declaration of Mr. Pritesh D. Shah, "McLeodUSA primarily markets services to small and medium business customers with 8 to 200 employees," and "where it makes economic sense to do so, typically for very large customers or customers located very closely to our intracity or intercity lit fiber, McLeodUSA has installed its own fiber loops to business locations." In other words, according to Mr. Shah, McLeod's primary focus is on the small to mid-sized business market, but it also serves large business customers in the Omaha market.

4. At page four of my original declaration in this docket, I provided retail access line data comparing Qwest in-service quantities for December 2000 and February 2004 (the most current data vintage when the original declaration was developed) for the Omaha

MSA, showing that Qwest's residential retail access line base in that area had declined by **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** and that its business retail access line base had declined by **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]**, resulting in an overall retail line base decline of **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]**[3] due to competition from CLECs, wireless carriers and Voice Over Internet Protocol ("VoIP") providers. With respect to business service, the focus of McLeod's petition, I have completed an additional analysis (shown in Confidential Attachment A) of the change in Qwest's retail business line base in each of the Omaha MSA wire centers from December 2002 through December 2004 (pre-forbearance) and from December 2005 through May 2007 (post-forbearance), and also compared the rate of loss in the nine OFO wire centers against the rate of loss in the remaining Omaha MSA wire centers in which UNE loop prices remain available. As shown in Confidential Attachment A, it is noteworthy that Qwest's rate of retail business line loss in the nine OFO wire centers **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** after the FCC released in December 2005 its order relieving Qwest of the requirement to provide UNE loops in those nine wire centers. It is also noteworthy that Qwest's rate of retail business line losses in the "post-forbearance" period in the nine OFO wire centers is **[BEGIN CONFIDENTIAL]** [redacted]

[3] These percentages exclude the effects of competitive losses occurring prior to December 2000 as well as any losses of customers who elected to subscribe to the service of a Qwest competitor without first having been a customer of Qwest.

[redacted] [END CONFIDENTIAL]. Clearly, Qwest's business services continue to be subject to strong competition throughout the Omaha MSA since the release of the FCC's order in this docket.

5. In addition to the evidence provided by Qwest in this docket in its initial filing and subsequent ex parte filings regarding the scope of competition in the Omaha MSA from CLECs, wireless carriers and VoIP providers, the FCC solicited information directly from Cox Communications, which is the carrier with the most extensive non-Qwest telecommunications facilities in that market. In its order (FCC 05-170) at paragraph 2, the FCC stated "we grant Qwest forbearance from the obligation to provide unbundled loops and dedicated transport pursuant to section 251(c)(3) in those portions of its service territory in the Omaha MSA where a facilities-based competitor (Cox) has substantially built out its network." In determining the extent to which Cox had built out its network, the FCC received network deployment data from Cox for its Omaha-area market. Based on that evidence, the FCC determined that, in the nine OFO wire centers, Cox's network (at that time) covered 75% of the end user locations.[4] This evidence, coupled with the additional evidence presented by Qwest, was the basis for the FCC's

[4] *See* FCC 05-170, fn 155. In its initial order, this percentage was designated as a confidential number. However, Cox subsequently agreed that this value could be publicly disclosed, and on July 23, 2007, the FCC issued a notice publicly disclosing that Cox's network covers 75% of the end user locations in the nine OFO wire centers.

determination that a continuing requirement for Qwest to provide UNEs in the nine OFO wire centers was no longer warranted.

6. In my original declaration, beginning at page 10, I described the business services offered by a subset of CLECs serving the Omaha MSA: Cox, McLeod and Alltel, in addition to wireless and VoIP telecommunications alternatives available there. Subsequently, Qwest provided information in an ex parte on May 18, 2005 showing in Tab 3 of the binder Qwest provided in that ex parte that these three carriers, in addition to carriers such as AT&T, KMC, Level 3, MCI and Sprint, have extensive fiber optic network facilities in the Omaha MSA, particularly in the nine OFO wire centers. In addition to Cox, which has the most extensive non-Qwest network in the Omaha MSA, there are clearly other facilities-based carriers in the nine OFO wire centers offering competitive telecommunications services.

7. With regard to Cox, the facts before the FCC in this docket firmly established that Cox has experienced resounding success in utilizing its own Omaha network to capture roughly half the residential telecommunications customer base in that area. As described earlier, the FCC found, based on Cox's own data, that the Cox network in the nine OFO wire centers passed three quarters of the end user locations. In my earlier declaration in this docket, beginning at page 15, I described in detail the services Cox is providing to small, medium and large business customers in the Omaha market. The current Cox

website[5] for the Omaha market shows a robust set of Cox business services available for small, medium and large business customers, ranging from local business lines to PBX trunks to long distance services to private lines. An article published in Network World on October 25, 2006 provides additional insight into Cox's focus on the business market, entitled "Cable companies intensify enterprise service ambitions; Comcast, Cablevision, Cox, Time Warner and others see multi-billion dollar opportunity," as follows:

> "For Comcast, it's reportedly $3 billion to $5 billion in five to seven years. For Cablevision, it's $1.5 billion in two years. And for Cox, it's $1 billion in four years. These are revenue targets cable companies say they can achieve from selling phone, data and other services to corporate customers, large and small. Indeed, cable multisystem operators (MSO) are increasingly investing in and targeting enterprise businesses to broaden their market and take competition with the phone companies beyond the residential market.
>
> "It's a quieter story, but the RBOCs certainly know we're there taking business from them," says Hyman Sukiennik, vice president and general manager of Cox Business Services in Omaha, NE.
>
> Sukiennik says revenue from Cox Business Services is currently growing at 20% per year. That would put 2006 revenue at just under $500 million and 2010's at just over $1 billion.
>
> Cox Business Services has been in the enterprise market for eight years, but has predominantly targeted small and medium-sized businesses. Sukiennik says the company also has large enterprises in its sights and can offer them anything from a single POTS line to an OC-48."[6]

[5] http://www.coxbusiness.com/systems/ne_omaha/index.html

[6] *Cable companies intensify enterprise service ambitions; Comcast, Cablevision, Cox, Time Warner and others see multibillion-dollar opportunity,* Network World, October 25, 2006.

It is clear that Mr. Sukiennik, general manager of Cox Business Services in the Omaha market, is fully aware of Cox's successes in increasing its revenues at double digit rates from competitive business services in the small, medium and large business segments.

8. In Qwest's July 25, 2005 ex parte in this docket responding to a request from the FCC staff for additional information regarding the scope of business telecommunications customers served by Cox, Qwest provided in Tab 16 of the ex parte binder a copy of a non-confidential sales presentation made by Cox on May 23, 2005 to a Qwest business customer in Omaha. Several key facts are outlined in Cox's presentation regarding its operations in the Omaha market, as shown in the information (applicable to the time period up to May 2005) contained in Tab 16:

- Cox Business Services enterprise market sales growth has been 100% per year for five consecutive years.
- Cox reports that it is now serving a large number of significant Omaha businesses, including Creighton University, Bellevue University, Affinitas, CS!, CommScope, Echostar, Farm Credit Services, First National Technology Solutions, infoUSA, iStructure, Kelloggs, Kutack Rock, Methodist Health System, Metropolitan Utilities District, National Indemnity, Omaha Public Power District, Oriental Trading, Royal Navy, Travelex, Union

Pacific, U.S. Marines, United States Strategic Command and others.

- Cox's network in the Omaha MSA spans 4,100 network miles.
- Cox has over 1,000 miles of fiber in the Omaha market.

Remarkably, at page 7 of its petition, McLeod states: "Of course, forcing McLeodUSA out of the market means that current McLeodUSA customers will be forced to go back to Qwest." However, it is very clear that Cox (as well as other carriers identified in the evidence in this docket as serving business customers) stands ready to serve business customers of virtually any size that may be seeking an alternative telecommunications provider should McLeod elect to exit the Omaha market. McLeod's assertion is simply not based on facts.

9. Importantly, Cox's current website also shows the availability in Omaha of its Carrier Access Service, which Cox provides to other carriers and describes as follows:

> "Cox Carrier Access service is the ideal solution for secure and reliable connections to your voice and data customers. Built on our own fiber-based SONET self-healing network, Cox Carrier Access service gives you high-capacity communications that set the standard for high-speed and high-quality digital transmissions at a cost-effective price."[7]

[7] http:///www.coxbusiness.com

The Cox Carrier Access options include DS1 loops, DS3 loops and OCn services ranging from OC-3 to OC-192.[8] Further, Cox states that its DS1 and DS3 services "can be fanned out to multiple destinations" on a channelized basis[9] to provide DS0 connections as alternatives to DS0 services offered by Qwest.

This information stands in stark contrast to the assertion at page 16 of the declaration of Mr. Don Eben that Qwest "is the only wholesale provider of last mile loop facilities in Omaha." In fact, at page 3 of his declaration, Mr. Shah asserts that McLeod is aware of at least one alternative provider of last mile loop facilities in Omaha when he states: "I am personally aware that McLeodUSA representatives have contacted the cable operator in Omaha on more than two occasions, but the cable operator has declined to offer access to its facilities on a wholesale or resale basis." According to his representations, Mr. Shah is personally aware that Cox (which is presumably the cable operator referenced) offers alternative loop services to carriers such as McLeod in Omaha. However, Mr. Shah's assertion appears to be carefully worded. By stating that Cox "declined to offer access to its facilities on a wholesale or resale basis," Mr. Shah is not stating that Cox flatly declined to offer McLeod access to its Omaha facilities. Instead, Mr. Shah appears to be suggesting that McLeod did not find acceptable the price points Cox offered for its carrier access loops (and the declarant provided no information at all as to what prices

[8] http://www.coxbusiness.com/pdfs/cox_carrier.pdf
[9] *Id.*

Cox offered McLeod for its carrier access loops, the type of loops requested by McLeod or the number of circuits McLeod sought to purchase from Cox to enable the FCC and other parties to consider the Cox price points McLeod found objectionable).

10. Additionally, Qwest's deregulated affiliate, Qwest Communications Corporation ("QCC") regularly obtains rate quotes from other carriers for non-Qwest services it may require in serving its end users. In the Omaha MSA, QCC received quotes from Cox and AT&T for DS1 and DS3 services they offer there, and received quotes from these two providers as well as from Verizon/MCI for OCn services in that MSA. This information shows that, at a minimum, three competitive carriers offer private line/special access services in competition with Qwest's interstate special access services in the Omaha market.[10]

11. In its July 25, 2005 ex parte filing with the FCC in this docket, Qwest provided in Tab 17 detailed information showing the range of Enterprise business services available in the Omaha MSA from providers such as AT&T, Alltel (now known as Windstream), MCI (now known as Verizon) and McLeod, in addition to Cox. These services remain

[10] Additionally, the Northwest Iowa Power Cooperative ("NIPCO") reports that it has installed fiber optic telecommunications facilities in Omaha, and states at its current website that "NIPCO provides fiber optic capacity through its subsidiary, NIPCO Development Corporation (NDC). Telecommunications services are available into the cities of Omaha, Nebraska, Sioux City, Iowa and Sioux Falls, South Dakota. Among the services included are DS0, T1, DS3 and Synchronous Optical Network (SONET) interconnectivity." This power company is yet another provider of wholesale telecommunications services in the Omaha market. Source: http://nipco.coop/Services/Telcom/index.html

available from these carriers to Enterprise customers in that market. In the face of these facts, it is remarkable that footnote 23 of McLeod's petition states "while it is possible that some mass market customers may choose to switch to Cox, *see Omaha Forbearance Order,* ¶ *66,* business customers, and, in particular, small and medium sized customers served with T1 services, will not actually have a choice of facilities-based providers unless Cox is directly connected to each affected customer's premises with their own connection." Clearly, contrary to McLeod's assertion, Enterprise business customers do have competitive choices in Omaha, and especially in the nine OFO wire centers. Also, the FCC did not in its Omaha order and does not now require that a grant of forbearance be conditioned on a 100% competitive facilities-based overbuild of the incumbent's network in a particular market. Rather, the FCC found in its Omaha order that a sufficient level of competitive overbuilding (coupled with additional evidence of competition that is not reliant upon UNEs) had occurred in the nine OFO wire centers to justify relieving Qwest of Section 251 unbundling requirements. That level of overbuilding has not diminished since the issuance of the FCC's Omaha order, and, as stated previously in this declaration, Qwest has continued to lose business lines to competitors in that market since that time.

McLEOD'S BUSINESS MODEL

12. In its comments, McLeod asserts that it may opt to exit the Omaha market, ostensibly due solely to the input costs it incurs from Qwest for wholesale services it requires in providing services to McLeod customers. However, there are two notable omissions from McLeod's comments. First, McLeod neglects to mention that the Omaha MSA is one of the most competitive telecommunications markets in Qwest's region, a fact that was a major factor in the FCC's grant of Section 251 forbearance in the nine OFO wire centers. It is well established in the record in this docket that Cox is a very formidable competitor in that market, and Cox does not compete only with Qwest. In fact, Cox's marketing focus has now expanded to encompass business customers of all sizes and it also competes directly with McLeod for these same customers, utilizing the extensive Cox-owned coaxial and fiber network in the Omaha area. The fact that Cox has captured the lion's share of telecommunications customers in the Omaha MSA means that the potential market opportunity for McLeod in Omaha is much smaller than it may be in other markets where the incumbent still retains a greater share of the residential and business retail customer base. Since McLeod faces such stern competition from Cox, as well as competition from other carriers such as AT&T, MCI/Verizon, Windstream, Qwest and others in the Omaha MSA, it is logical that McLeod would choose to focus

instead on other markets that may present more lucrative opportunities.[11] In its Third Quarter 2005 Form 10-Q filing with the Securities and Exchange Commission ("SEC") for the quarterly period ending September 30, 2005, which is McLeod's most recent 10-Q report, McLeod identified the reasons for its revenue declines as including "weaknesses in segments of the telecommunications industry, turnover of customers to competitors in excess of new customers acquired, reduction of long distance minutes used by the Company's customer base, reduction in access rates as mandated by the Federal Communications Commission ("FCC"), and lower prices for some of its products."[12] Nowhere in the McLeod petition were any of these factors discussed as additional considerations McLeod must take into account in assessing its market opportunities in Omaha.

In addition, McLeod neglects to mention that it has struggled in its efforts to remain viable as a CLEC, irrespective of the effects of the FCC's Omaha order. In 2002 and again in 2005, McLeod filed for Chapter 11 protection, and emerged as a privately-held

[11] At page 18 of its petition, McLeod refers to an assertion by Integra, in comments Integra filed on March 5, 2007 in WC Docket No. 06-172 concerning Verizon's forbearance proceedings, that it has decided to forego entry into the Omaha business telecommunications market, allegedly due solely to the unavailability of TELRIC-based UNE loop rates there. However, Integra's claims about the basis for its decision with respect to the Omaha market are simply filed comments that have not undergone a contested investigation, and it defies business logic that the lack of availability of TELRIC-based loop pricing is the sole basis for its allegation. Integra is clearly a rational and successful CLEC that has very recently purchased other telecommunications entities such as Eschelon and Electric Lightwave. The implication that Integra--a rational company--considered no other factors, such as the extraordinarily competitive Omaha business telecommunications market, in reaching a business decision to forego market entry in Omaha in favor of other markets is simply not credible.

[12] *Id.* P. 7.

company in January 2006. Since the Omaha Forbearance Order was not set in place until December 2005, these financial difficulties had nothing at all to do with the lack of continued availability of below-cost UNE loops in the nine OFO wire centers. In its September 2005 public 10-Q filing, McLeod reported a decline in revenue from $533.5 million in September 2004 to $474.6 million in September 2005, and operating losses of $490.3 million as of September 2004 and $377.5 million as of September 2005.[13] These are not indicators of a financially healthy company. Further, independent industry analysts have examined McLeod's business model and have expressed concerns about McLeod's viability. For example, Current Analysis released an assessment of McLeod's operations on June 20, 2007, in which it stated:

> "McLeodUSA traditionally has not been profitable, and the carrier has experienced steady revenue declines on a year-over-year and sequential basis. The company had $126 million in revenue in Q1 2007, down from $146 million in Q1 2006. For the full year 2006, McLeodUSA had $545 million revenue, down from $635 million in 2005. The company generated positive EBITDA in Q1 2007 ($12 million) as well as for 2006, but it recorded operating and net losses for both the full year 2006 and the first quarter of 2007; for Q1 2007, McLeodUSA had operating and net losses of $7 million and $11 million, respectively."[14]

Further, Current Analysis states:

> "Despite its lowered debt, McLeodUSA continues to show operating and net losses. Although currently EBITDA and cash flow positive, the company has a history of spending more than it takes in, which combined

[13] *Id.*, P. 5.

[14] *Business Network Services - U.S., Company Assessment of McLeodUSA*, Current Analysis, June 20, 2007. Full report available for review at http://www.currentanalysis.com

> with its shrinking revenues does not inspire confidence that McLeodUSA can turn its business to long term profitability."[15]

Separate from the concerns it expressed in its Omaha petition, it is clear from its own public statements, bankruptcy proceedings and independent industry analysis that McLeod's business model is suspect and that McLeod is struggling to attract and retain customers in its chosen markets--primarily those in which it continues to have the benefit of access to TELRIC-priced UNEs. These are real issues that must be considered by McLeod as it assesses market opportunities but were notably absent from its comments in its Omaha petition.

QWEST'S WHOLESALE PRICING PRACTICES ARE REASONABLE

13. At page 4 of its petition, McLeod complains that "Qwest has offered only to replace high-capacity UNEs with special access services from its FCC Tariff No. 1, at vastly higher rates for both recurring and nonrecurring charges." This statement, which is echoed in the declaration of Mr. Don Eben, is essentially the sole underpinning of McLeod's complaint. However, this underpinning is flawed for two reasons. First, it entirely ignores the extensive facts presented in this docket by Qwest and other parties regarding the scope of competition the FCC relied upon in determining that Qwest

[15] *Id.*

qualified for forbearance from Section 251 unbundling requirements in certain wire centers in the Omaha MSA. In ignoring these facts, McLeod also would have the Commission believe that it is being "squeezed" out of the Omaha market by Qwest because Qwest is purportedly the only alternative available to McLeod for the DS0, DS1 and DS3 services it needs to provide retail services to business customers. As discussed in the prior section of my declaration, this is flatly untrue. Second, McLeod's complaint presumes the Qwest DS0, DS1 and DS3 service prices available to McLeod in the nine OFO wire centers are not reasonable because they exceed the TELRIC-based UNE prices previously available to McLeod for these services. As discussed below, Qwest's prices for these services in the nine OFO wire centers are appropriate and fully satisfy Section 271 pricing requirements.

14. Beginning at page 8 of his declaration, Mr. Don Eben argues that "Qwest's proposed commercial wholesale terms for alternatives to § 251(c)(3) DS0 UNEs are likewise unacceptable." Qwest presumes Mr. Eben is limiting his use of the term "unacceptable" solely to McLeod, since at least one other major CLEC has already purchased Qwest's DS0 commercial alternative in the nine OFO wire centers, as discussed in the declaration of Mr. Larry Christensen. Mr. Eben goes on at page 9 to criticize Qwest's DS0 commercial service rates as being unreasonable because they are "approximately 30% more than DS0 UNE rates." Once again, Mr. Eben's challenges are

without merit. In fact, the Nebraska PSC previously established DS0 loop rates they found to be reasonable in Docket No. C-2516, the most recent cost docket regarding Qwest's TELRIC-based wholesale rates in Nebraska.[16] Attachment B to my declaration shows that the TELRIC-based recurring rates found appropriate by the PSC were $15.14 for two-wire DS0 UNE loops and $30.28 for four-wire DS0 UNE loops in Zone 1. The associated nonrecurring charge established in that docket for both types of UNE loops was $65.00. Subsequently, as part of Qwest's voluntary wholesale price reductions associated with the Section 271 proceedings, Qwest reduced the DS0 UNE two and four-wire loop recurring rates to $12.14 and $23.83 respectively, and the nonrecurring charge was reduced to $55.27 for both services.[17] These prices are lower than the TELRIC-based UNE prices established by the Nebraska PSC in Docket No. C-2516. Subsequent to the FCC's 2005 grant of Section 251 forbearance in the nine OFO wire centers, Qwest adjusted its commercial rate for the two wire DS0 loop to $15.71 and $30.84 for the four wire DS0 loop, and left the nonrecurring charge for both types of loops at $55.27. As shown in Attachment B, relative to the TELRIC-based rates found to be reasonable and ordered into effect by the Nebraska PSC in Docket No. C-2516, the two-wire commercial DS0 loop recurring price is less than 4% over the PSC-established TELRIC rates and the four-wire commercial DS0 loop recurring rate is less than 2% over the TELRIC-based price in the nine OFO wire centers. The nonrecurring charges for both types of DS0

[16] Docket No. C-2516/PI-49, approved April 23, 2002.
[17] Docket No. C-2750, approved February 4, 2003.

loops, which did not change from the prices established during the 271 proceeding, are 15% below the TELRIC-based nonrecurring rates for these services established by the PSC. Contrary to Mr. Eben's claim that Qwest's commercial DS0 loop rates are unreasonable, they are clearly in line with TELRIC-based rates previously established by the Nebraska PSC in Docket No. C-2516 as being, in the PSC's view, reasonable.

15. With regard to DS1 and DS3 services, Qwest's rates are very reasonable when contrasted to comparable rates of its sister RBOCs, and to the extent the other RBOCs' DS1 and DS3 rates have not been found to conflict with Section 271 requirements, Qwest's DS1 and DS3 special access rates available to McLeod and other CLECs in Omaha should be viewed as reasonable. Attachment C shows a summary of Qwest's month-to-month interstate DS1 and DS3 special access recurring rates[18] as compared to the comparable interstate special access rates of Verizon and AT&T. Data for this comparison was obtained from FCC interstate tariffs for each RBOC. For this comparison, Qwest assumed configurations for each RBOC consisting of two channel terminations plus average circuit mileage of ten miles. The table below summarizes the

[18] The Qwest and AT&T rates in this comparison are Price Flex Zone 2 rates, and the Verizon rates are its Price Band 5 rates (which are equivalent to Qwest's Price Flex Zone 2 rates). As noted in the footnotes of Attachment C, Qwest selected comparable rates for the other RBOCs for this comparison to ensure equivalence. As noted in Attachment C, the rates used in this comparison do not reflect the voluntary temporary rate reductions by AT&T implemented as a condition to the AT&T/BellSouth merger proceedings. Month-to-month rates were used for ease of comparison, although special access subscribers often receive progressive discounts based on term and volume commitments.

percentage differences, which are also shown in Attachment C, in the other RBOCs' filed DS1 and DS3 special access rates as compared to Qwest's:

% Difference In DS1/DS3 Recurring Rates As Compared To Qwest's

	VZ Bell Atlantic	VZ NYNEX	AT&T Ameritech	AT&T BellSouth	AT&T PacBell	AT&T SWBT
DS1	+49%	+51%	+55%	+2%	-9%	+16%
DS3	+48%	+33%	+7%	+3%	-20%	-8%

Qwest's DS1 and DS3 interstate special access prices are well below comparable rates offered by Verizon for these services, and fall in the midrange of the DS1 and DS3 interstate special access prices of AT&T. This comparison clearly shows that Qwest's DS1 and DS3 prices are reasonable in comparison to the comparable rates offered by its RBOC peers.

SUMMARY

16. My declaration provides clear evidence that, contrary to McLeod's assertions in its petition, local exchange telecommunications competition continues to thrive in the nine OFO wire centers, that competitive alternatives to Qwest's Special Access services are readily available in the Omaha market and that Qwest's wholesale pricing practices are appropriate and conform to Section 271 pricing requirements. While McLeod alleges that business customers will have no choice other than Qwest should McLeod